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June 27, 2003

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VIA HAND DELIVERY

RECEIVED

Marlene H. Dortch, Esquire  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

JUN 27 2003

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: MB Docket No. 02-338, RM 10624

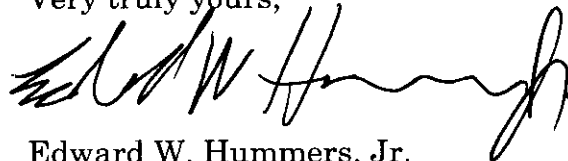
Dear Secretary Dortch:

We have been advised by the Media Bureau that the comments filed on February 14, 2003, on behalf of Channel 20 TV Company, licensee of station KUPN(TV), Sterling, Colorado, in the above reference proceeding, have not been placed in the ECFS system of the Commission nor have the paper copies of the comments been located.

Attached hereto are five copies of the original transmittal letter and comments filed with the Commission bearing the Office of the Secretary date stamp of February 14, 2003.

Should you have any questions concerning this matter, please communicate with the undersigned.

Very truly yours,



Edward W. Hummers, Jr.

cc: Bart Gorman, Esquire (w/enc.)

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FEB 14 2003

February 14, 2003

Federal Communications Commission  
Office of Secretary

Rebecca Duke  
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VIA HAND DELIVERY

Marlene Dortch  
Secretary  
Federal Communications Commission  
445 Twelfth Street, SW  
Washington, DC 20554

Re: In the Matter of Amendment of Section 73.606(b), Table of Allotments, TV Broadcast Stations (Sterling and Fort Morgan, CO) and Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations (Sterling and Fort Morgan, CO), MB Docket No. 02-338, RM-10624

Dear Ms. Dortch:

Transmitted herewith, on behalf of Channel 20 TV Company, licensee of station KUPN(TV), Sterling, Colorado, are an original and four (4) copies of its comments filed in the referenced proceeding to amend the television Table of Allotments and the digital television Table of Allotments.

An extra copy of the filing is enclosed. Please date-stamp the extra copy and return it to the courier for return to me.

Should you have any questions concerning this matter, please contact the undersigned.

Very truly yours,

  
Rebecca Duke

Enclosures

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Amendment of Section 73.606(b),	)	
Table of Allotments,	)	
TV Broadcast Stations.	)	
(Sterling and Fort Morgan, Colorado)	)	
	)	MB Docket No. 02-388
	)	RM-10624
Amendment of Section 73.622(b)	)	
Table of Allotments,	)	
Digital Television Broadcast Stations	)	
(Sterling and Fort Morgan, Colorado	)	

To: Assistant Chief, Audio Division:

**Comments of KUPN(TV)**

Channel 20 TV Company, licensee of television station KUPN(TV), NTSC Channel 3, Sterling, Colorado (Facility ID Number 63158) and permittee of Digital Channel 23, Sterling, Colorado ("KUPN"), files herewith, by its attorneys, its comments in the referenced proceeding.

**Background**

KUPN filed a Petition for Rule Making on June 20, 2002, and two Supplements thereto,<sup>1</sup> ("Petition") requesting an amendment to the Television Table of Allotments, 47 C.F.R. § 606(b), and the Digital Television Table of Allotments, 47 C.F.R. §73.622(b), to change the allotments of NTSC Channel 3 and Digital Channel

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<sup>1</sup> KUPN filed Supplements to the Petition on July 23, 2002 and October 18, 2002.

23 from Sterling, Colorado to Fort Morgan, Colorado. In the Petition (as amended by the Supplements), KUPN proposes moving to a transmission facility located at coordinates 39° 56' 18" NL and 103° 52' 06" WL, approximately six miles from Hoyt, CO (the "Proposed Site").<sup>2</sup> On December 24, 2002, the Commission released the Notice of Proposed Rule Making ("NPRM") asking for comments on the two following proposed amendments:

1. Amendment to the Television Table of Allotments:

<u>Community</u>	<u>Present Channel:</u>	<u>Proposed Channel:</u>
Sterling, CO	3, *18+	*18+
Fort Morgan, CO	-	3

2. Amendment to the Digital Television Table of Allotments:

<u>Community</u>	<u>Present Channel:</u>	<u>Proposed Channel:</u>
Sterling, CO	23	-
Fort Morgan, CO	-	23

For the reasons set forth below and as demonstrated by the Petition, which is incorporated herein by reference, and the Engineering Report attached hereto, KUPN submits that the proposed amendments to the Television Table of Allotments and to the DTV Table of Allotments are consistent with the Commission's Rules and will serve the public interest.

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<sup>2</sup> KUPN's Petition, as amended by the Supplement of October 18, 2002, noted that it proposed to operate from the Proposed Site with analog facilities of 100 KW at 600 meters HAAT. See, Engineering Report attached to October 18, 2002 Supplement. The NPRM, however, incorrectly states that the proposed HAAT will be 600 "feet." See, NPRM at para. 3. KUPN proposes to operate at 600 meters, not 600 feet, and draws this to the Commission's attention. The notice of the NPRM published in the Federal Register refers to the tower by correct coordinates only, and not by coordinates and HAAT and the notice is, therefore, not deficient and republication is not required.

## Comments

### I. Request to Change Television Table of Allotments Complies with the FCC's Technical Rules and is in the Public Interest.

Pursuant to Section 1.420(i), KUPN seeks to amend Section 73.606(b) to modify the license of NTSC Channel 3 to specify a new community of license (Fort Morgan, CO).<sup>3</sup> This change in community of license is mutually exclusive with the existing allotment (Sterling, CO) permitting the modification of the KUPN authorization to specify Fort Morgan, CO as its new community of license without affording other interested parties an opportunity to file competing expressions of interest.

The Proposed Site is consistent with the technical requirements of the Commission's Rules with a site restriction of 35.1 kilometers south of Fort Morgan. The public interest factors supporting adoption of the proposed rule are: KUPN will change its operations from a 100 percent satellite of KTVD, Denver, to an independently programmed station; the reallocation will bring Fort Morgan its first and local broadcast television service while Sterling may be served by allocated but unapplied for non-commercial Channel 18;<sup>4</sup> Fort Morgan is the county seat of Morgan County, a larger and faster growing county than is Logan County in which

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<sup>3</sup> KUPN's Petition originally contained a request for waiver of the minimum mileage separation requirement of Section 73.610 of the Rules. In a Supplement filed on October 18, 2002, KUPN advised the Commission that it had changed the proposed new transmitter site, the new site meets all of the Commission's coverage and separation requirements, and, therefore, a waiver of Section 73.610 of the Rules was no longer requested.

<sup>4</sup> Sterling will continue to receive the present KTVD/KUPN programming via cable and satellite, as Sterling is within the Denver DMA and the KTVD UPN network programming is carried by the cable and satellite services. Cable/satellite penetration in the loss area is 87.7%. See Petition at 7.

Sterling is located; and the proposed operation will permit KUPN to serve an additional 24,730 square kilometers and 2,718,000 persons within its Grade B area and 36,770 persons with their first television service and 12,800 persons with their second television service.

The request to modify KUPN's community of license is fully consistent with the Commission's multiple ownership rule, *see* 47 C.F.R. § 73.3555(b), which provides that an entity may directly or indirectly own, operate or control two television stations in the same DMA if at least one of the stations is not ranked among the top four stations in the DMA and at least eight independently owned and operating full-powered television stations would remain. The change of the status of KUPN from a satellite station to one of independent programming will not violate the local television ownership rule. First, neither KTVD nor KUPN is ranked among the top four rated stations in the Denver DMA. Second, there are over eight independent voices with overlapping contours of KTVD and/or KUPN, including: KCEC(50), KCNC-TV(4), KDEN(25), KDVR(31), KRMA-TV(6), KFNR(11), KBDI-TV(12), KMGH-TV(7), KPXC-TV(59), KTVJ(14), KUSA-TV(9), KWGN-TV(2), KRMT(41), and KWHD(53). Therefore, the Grade B overlap of KTVD and KUPN, with the cessation of the operation of the latter as a satellite station, complies with the local television ownership rule.

In summary, the proposed change in community of license is consistent with the Commission's technical and multiple ownership rules and otherwise promotes the fair and efficient distribution of television channels in the state of Colorado.

II. Request to Change Digital Television Table of Allotments Complies with the FCC's Technical Rules and is in the Public Interest.

The modification of the community of license to Fort Morgan for Digital Channel 23 complies with Sections 73.623 and 73.625 of the Rules. See the Engineering Report filed with the Supplement to Petition filed on October 18, 2002. As set forth therein, the proposal: (1) complies with the principal community coverage requirements of Section 73.625(a); (2) can be made without disrupting any of the other DTV allotments made in the *Allotment Reconsideration Order*, as amended by subsequent Commission proceedings; (3) will not result in more than an additional two percent of the population served by any other DTV station, DTV allotment or analog television broadcast station being subject to interference; (4) will not result in any new interference to stations that already experience interference to ten percent or more of their population; (5) will not result in interference that would cause another station to begin experiencing interference to greater than ten percent of its population; and (6) meets the requirements of Section 73.623(d) for geographic spacing with regard to all other DTV stations, DTV allotments and analog TV stations.

As demonstrated above, the allotment of analog Channel 3 to Fort Morgan is in the public interest. Therefore, the change of community of license to Fort Morgan for the companion digital allotment, DTV Channel 23, is necessary and also in the public interest.

Conclusion

KUPN respectfully requests that the Commission: (1) amend the Television Table of Allotments to change the allotments of NTSC Channel 3 from Sterling, CO to Fort Morgan, CO; and (2) amend the DTV Table of Allotments to change the allotments of Digital Channel 23 from Sterling, CO to Fort Morgan, CO. KUPN affirms that if NTSC Channel 3 and Digital Channel 23 are allotted to the Fort Morgan, Colorado market, it will promptly file applications for construction permits and, if the applications are granted by the Commission, KUPN will promptly construct its facilities to operate on NTSC Channel 3 and Digital Channel 23.

Respectfully submitted,  
Channel 20 TV Company

By: 

Edward W. Hummers, Jr.  
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Its Attorneys

Dated: February 14, 2003

WAS1 #1158302 v1



**SUPPLEMENTAL ENGINEERING STATEMENT RE:  
REALLOCATION OF KUPN(TV)  
FROM STERLING, COLORADO  
TO FORT MORGAN, COLORADO  
CH. 3-NTSC, 100 KW ERP, 600 METERS AAT**

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GRADE B SERVICE AREA AND POPULATION	FIGURE 2

Prepared by  
Lohnes and Culver      Washington, D.C.  
February, 2003

**SUPPLEMENTAL ENGINEERING STATEMENT RE:  
REALLOCATION OF KUPN(TV)  
FROM STERLING, COLORADO  
TO FORT MORGAN, COLORADO  
CH. 3-NTSC, 100 KW ERP, 600 METERS AAT**

**INTRODUCTION**

This engineering statement is prepared on behalf of Channel 20 TV Company, licensee of KUPN, "KUPN" (formerly KTVS) at Sterling, Colorado. KUPN is licensed on NTCS Channel 3 and has been paired with DTV Channel 23. KUPN has a pending FCC application, file BPRM-020620BK, to reallocate NTSC Channel 3 from Sterling to Fort Morgan, Colorado and to relocate its NTSC transmitter facilities approximately 108 km southeast. That initial site creates a short spacing with NTSC station KREG-TV, Channel 3, in Glenwood Springs, Co. It has been proposed to move the new KUPN location approximately 5 miles east, slightly closer to Fort Morgan, so as to relieve the NTSC Channel 3 short spacing. This statement contains additional technical information in support of the proposed change.

**PROPOSED NTSC RELOCATION**

The proposed relocated facility will be 100 kW at 600 meters AAT. The relocated transmitter site remains approximately 35 miles south of Fort Morgan and approximately 6 miles to the east-southeast of Hoyt, Colorado. As a result of that relocation the proposed Grade B service areas have shifted and this statement provides maps and tabulations showing the resulting new coverage, area and population.

**GRADE B CONTOUR AREA COVERAGE**

There will be a slight relocation, with little change to, the Grade B coverage to the general area and the gain and loss areas. The relocated Proposed Grade B Contour, and the present contour, are shown on the map attached as Figure 1. The land area and populations residing in the Present and Proposed Grade B Contours are tabulated on Figure 2. The approximate area and population which gain or loose service as a result of Proposed Relocation are also shown on Figure 2.

## CONCLUSION

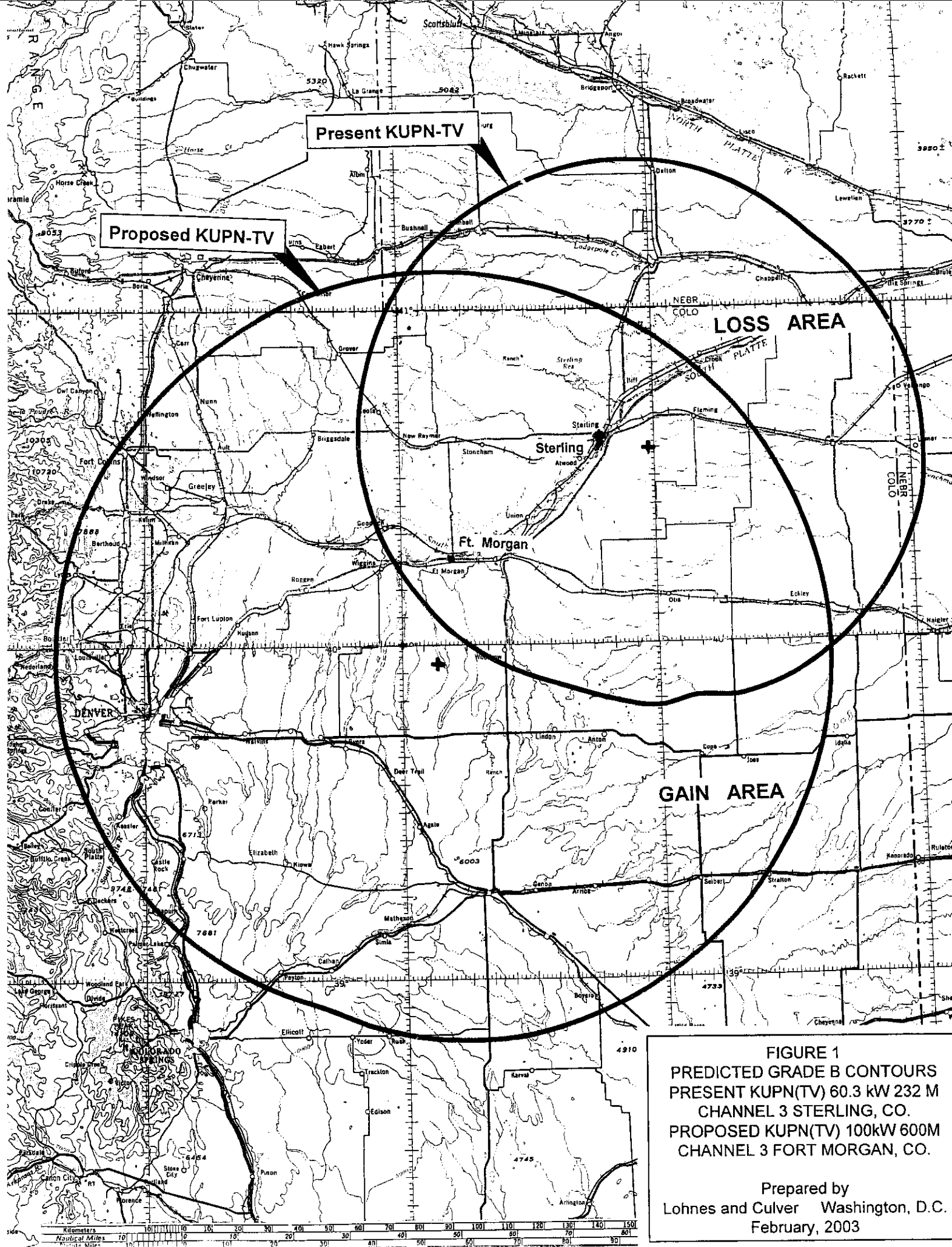
KUPN NTSC Channel 3 can be relocated and reallocated to Fort Morgan, at the new fully spaced location, and still provide a large increase in service area and population, bring a new first service to the community and surrounding area as detailed in the pending KUPN application.

RESPECTFULLY SUBMITTED,  
Lohnes and Culver

A handwritten signature in black ink, appearing to read "Robert D. Culver", written over a horizontal line.

Robert D. Culver, P.E.  
Md. Reg. No. 19672

February, 2003



**FIGURE 2**  
**GRADE B SERVICE AREAS**  
**KUPN(TV) CHANNEL 3 100 KW ERP**  
**CHANNEL 20 TV COMPANY**  
**FORT MORGAN, COLORADO**

<u>CONTOUR</u>	<u>AREA SQ. KM</u>	<u>POPULATION 2000 PL94-171</u>
Present Gr. B	26,460	80,800
Proposed Gr. B	51,190	2,798,800

<u>CONTOUR</u>	<u>AREA SQ. KM</u>	<u>POPULATION 2000 PL94-171</u>
Gr. B Gain	37,000	2,740,600
Gr. B Loss	11,000	24,800

<u>CONTOUR</u>	<u>POPULATION NO OTHER SERVICE</u>	<u>POPULATION ONE OTHER SERVICE</u>
Present Gr. B Loss Area	4,880	6,320
Proposed Gr. B Gain Area	41,650	19,120

Prepared by  
Lohnes and Culver      Washington, D.C.  
February, 2003